D-1

Nemecek & Cole
a Professional Corporation
15260 Ventura Boulevard, Suite 920
Sherman Oaks, California 91403-5344
Telephone (818) 788-9500
Facsimile (818) 501-0328

SUPERIOR COURT OF
THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

REC'D
NOV 18 2005
Filing Window

FILED
Los Angeles Superior Court
DEC 23 2005
John A. Clarke, Clerk
/s/ S. Wong
By S. Wong, Deputy

INDYWAY INVESTMENT, a non-associated unincorporated Business Trust Organization by and Through its trustee, Deron Brunson

Plaintiffs,

-vs-

DEBRA OPRI, an individual, OPRI & ASSOCIATES, a Professional Law Corporation, PHILLIP M. SMITH, JR. an individual, PHILLIP M. SMITH, JR., INC. a Professional Corporation; and DOES 1 through 100, inclusive

Defendants.

Case No. BC 317170

[Assigned to Department 40,
Honorable Judge David A. Workman]

FINDINGS OF FACT, CONCLUSIONS OF LAW AND STATEMENT OF DECISION

Trial Date: October 24, 2005
Dept.: 40

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants DEBRA OPRI, OPRI & ASSOCIATES, a Professional Law Corporation ("OPRI") hereby submits this [Proposed] Statement of Decision setting forth the Court's Findings of Fact and Conclusions of Law rendered in the above-referenced matter.

FINDINGS OF FACT

Following the submission of evidence at the trial in this matter, the Court made the following findings of fact based upon the evidence submitted in this matter. These findings are based on the exhibits submitted and the testimony of witnesses Melissa Diaz, Deron Brunson, Kedar Cohen, Ray Amavisca, Sharon Perkins, Martha Duran, John Moreno, Joyce Aiello, Inez Duarte and Sung Won Yi. After hearing the testimony, the Court gives little credibility to the Plaintiff's three principal witnesses Melissa Diaz, Deron Brunson and Ray Amavisca and the court adopts the credibility issues set forth in OPRI's Motion for Judgment that was filed pursuant to C.C.P. § 631.8 on or about October 31, 2005.

Specifically, with respect to Mr. Amavisca, the

court finds that his testimony with regard to the Proof of Service for the Change of Address Cards was not credible. With respect to Deron Brunson, the court finds that his testimony was so evasive and not forthcoming that it rendered all of his testimony suspect and without credibility. With respect to Melissa Diaz, her credibility was impeached in so many different instances, and was so evasive, that it was given no credibility. Further, the Court gives no credence whatsoever to Change of Address Cards dated October 16, 1999, (Plaintiff's Exhibit "4") and finds them to be an "offensive contrivance."

As for particular findings of facts, the Court finds as follows:

1. As of May 8, 1992 Plaintiff became the owner of those parcels of real property identified by Assessors I.D. Nos. 7429 0190 13 and 7429 0190 14 ("Lot Nos. 13 & 14"). (Exhibit "1").

2. Based on the testimony of Melissa Diaz, it was established that, at the time that Plaintiff acquired Lot Nos. 13 & 14, they were already in tax default.

3. Based on the testimony of Melissa Diaz, it was established that, after acquiring Lot Nos. 13 & 14, Plaintiff did not pay any property taxes on Lot Nos. 13 & 14 at any time.

4. As of May 1997, Lot Nos. 13 & 14 became subject to power of sale based upon their being in a tax defaulted status since May of 1992.

5. On August 15, 1997 the County of Los Angeles Tax Collector's ("The County") caused to be recorded, a Notice of Power to Sell with respect to Lot Nos. 13 & 14. (Exhibit "39" & "40").

6. As of October 12, 1999 the address of record that the County had for Plaintiff was P.O. Box 832 in North Hollywood California.

7. On October 12, 1999, Plaintiff orally instructed The County that all notices regarding Lot Nos. 13 & 14 should be mailed to 2725 Baltic Avenue, Long Beach, California ("the Baltic Avenue Address"). This instruction was confirmed by The County by letter dated October 13, 1999. (Exhibit "1034").

8. Lot Nos. 13 & 14 were placed in the Tax Defaulted Properties Auction scheduled for June 26, 2000. (Exhibit "54").

9. Based on the testimony of Sharon Perkins, Joyce Aiello and Martha Duran and based on Exhibits ("1048" & "1051"), the evidence established that The County made reasonable efforts to ascertain the last known mailing address for Plaintiff. In that regard, the County hired a private title company to obtain a Parties of Interest Report, the County then checked its records for any other properties owned by INDYWAY, cross referenced all the names of individuals in its records that were affiliated with INDYWAY and conducted a Super Pages search in an effort to locate all possible addresses for INDYWAY.

10. On May 10, 2000 the County mailed, via certified mail, return receipt requested, a Notice of Auction with respect to Lot Nos. 13 & 14 to eleven separate addresses which it was able to locate. (Exhibits "10" - "36").

11. The Notices of Auction sent by the County with respect to Lot Nos. 13 & 14 for the June 26, 2000 Auction complied with all of the requirements of R & T Code § 3701. (Exhibits "1049" & "1050").

12. Plaintiff received the Notices of the Auction for the June 26, 2000 Auction at the Baltic Avenue Address which is where Melissa Diaz resided and where Plaintiff regularly conducted its meetings. (Testimony of Melissa Diaz and Kedar Cohen, Exhibits "19" & "32")

13. Plaintiff also received the Notices of Auction at P.O. Box 832 North Hollywood California. (Exhibit "24").

14. Based on its receipt of the Notices of Auction, Plaintiff had actual notice of the June 26, 2000 auction. (Exhibits "19", "24" & "32").

15. Pursuant to Revenue and Taxation Code §§ 3707 & 4101, Plaintiff's right to redeem Lot Nos. 13 & 14 terminated on June 25, 2000.

16. Based on the testimony of Martha Duran, Sharon Perkins and Sung Won Yi, it was established that Lot Nos. 13 & 14 were sold to Sung Wo Yi at the June 26, 2000 Auction.

17. Based on the testimony of Sharon Perkins, Martha Duran and Joyce Aiello and all of the received Exhibits, it was established that The County complied with all applicable laws and procedures in connection with conducting the June 26, 2000 auction of Lot Nos. 13 & 14.

18. Based on the testimony of Sharon Perkins and Martha Duran, it was established that on August 11, 2000 the County paid the taxes owed on Lot Nos. 13 & 14 out of the proceeds from the auction sale.

19. Plaintiff failed to present any credible evidence which proved, by a preponderance of the evidence, that it ever redeemed Lot Nos. 13 & 14.

20. Plaintiff failed to present any credible evidence which proved, by a preponderance of the evidence, that the sale of Lot Nos. 13 & 14 was ever rescinded.

21. Plaintiff failed to present any evidence which proved, by a preponderance of the evidence, that the recording of the Rescission of the Notice of Power to Sell or the Cancellation of the Rescission of the Notice of Power to Sell violated Plaintiff's due process rights.

22. Plaintiff failed to present any credible evidence which proved, by a preponderance of the evidence, that Sung Won Yi committed any wrongful acts or conspired with any third parties to wrongfully acquire Lot Nos. 13 & 14.

CONCLUSION OF LAW

The Court makes the following conclusions of law based upon the causes of action asserted and the evidence submitted at the trial of this matter.

1. Plaintiff had actual notice of the June 26, 2000 Tax Defaulted Auction when it received the Notice of Auction mailed to the 2725 Baltic Avenue Address. [Revenue & Taxation Code § 3701].

2. Plaintiff's due process rights were not violated by the sale of Lot Nos. 13 & 14 since the County complied with all of the relevant laws and procedures prior to the sale of tax defaulted properties and since Plaintiff was provided with and received notice of the sale. [Bank of America v. Grant Inland R.V. Center, Inc. (2000) 78 Cal.App.4th 1267].

3. There was no fraud in connection with the Sale of Lot Nos. 13 & 14 [Revenue & Taxation Code § 3711].

4. Plaintiff failed to prove that it would have prevailed on a claim against the County had it filed a claim to set aside the sale of Lot Nos. 13 & 14.

5. Because it would not have prevailed on a claim to set aside the tax sale, Plaintiff has failed to prove that it suffered any damages as a result of any error or omission allegedly committed by OPRI and therefore cannot establish all of the elements necessary to support its causes of action for legal mal-practice or breach of contract. [United Community

Church v. Garcin (1991) 231 Cal.App.3d 327; Stanley v. Richmond (1995) 35 Cal.App.4th 1070]

STATEMENT OF DECISION

Having made the above findings o fact and conclusions of law, the court renders the following decision in this matter.

First Cause of Action

On Plaintiff's first cause of action for legal malpractice, the court finds for the Defendants and against the Plaintiff as set forth in this ruling.

Second Cause of Action

On Plaintiff's second cause of action for breach of contract, the court finds for the Defendants and against the Plaintiff as set forth in this ruling.

Dated: December 23, 2005.

/s/ David A. Workman
David A.Workman
Judge, Superior Court
of California